



INFORMATION INDUSTRY ASSOCIATION

March 24, 1997

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Secretary
Federal Communications Commission
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

Dear Sir or Madam:

Enclosed, please find an original and sixteen (16) copies of the Information Industry Association's comments in the FCC's Notice of Inquiry on Implications of Information Service and Internet Usage, CC Docket No. 96-263. Please circulate a copy to each Commissioner.

If you any questions, or if I may be of any assistance to you, please feel free to contact me at 202-319-0143. Your assistance in this matter is greatly appreciated.

Sincerely,

William Ashworth
Assistant Counsel, Government Relations

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Before the
Federal Communications Commission
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)	
)	
Access Charge Reform)	CC Docket No. 96-262
)	
Price Cap Performance Review for)	CC Docket No. 94-1
Local Exchange Carriers)	
)	
Transport Rate Structure)	CC Docket No. 91-213
and Pricing)	
)	
Usage of the Public Switched)	CC Docket No. 96-263
Network by Information Service)	
and Internet Access Providers)	

**Comments of the
Information Industry Association**

The Information Industry Association (IIA) hereby submits its comments in response to the Commission's Notice of Inquiry¹ (NOI) in this proceeding. The Commission has initiated this inquiry pursuant to the congressional directives set out in the Telecommunications Act of 1996² to develop competition in the telecommunications industry by establishing a pro-competitive, deregulatory national policy framework.³ While the Commission raises several issues in the NOI, IIA agrees with the tentative conclusion in the Access Charge Reform notice of proposed rulemaking⁴ that information

¹ Usage of the Public Switched Network by Information Service and Internet Access Providers, CC Docket No. 96-263, Notice of Inquiry (December 24, 1996)[hereinafter "NOI"].

² Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (to be codified at 47 U.S.C. §§151 et. seq.) [hereinafter "1996 Act"].

³ S. Conf. Rep. No. 104-230, 104th Cong. 2d Sess. 1 (1996) (Joint Explanatory Statement), See 47 U.S.C. §253, 47 U.S.C. §252(d)(2), 47 U.S.C. §251(c)(4).

service providers (ISPs) should not be subject to interstate access charges as currently constituted. Rather, IIA encourages the commission to view the treatment of access charges vis a vis information service providers in conjunction with a transition from the current pricing scheme to one in which access charges can be assessed at true costs. Through this approach, the ultimate result will be a regime which relies on market forces to promote competition in the information service industry.

As access charges move from the current regime, through a transition period, and ultimately to true cost, the FCC should adopt an elastic approach to the requirements imposed on information service providers to facilitate investment in high bandwidth data networks and to allow the information services industry to flourish without government regulation.

IIA believes that there are three stages involved in reforming the current access charge regime: 1) access charges as currently constituted; 2) a transition period from the current regime to a cost based system and 3) access charges based on actual cost. Therefore, it is appropriate to review the responsibilities of information service providers and the effect of access charges on their operations under three different situations.

First, it is clearly inappropriate to subject information service providers to interstate access charges as currently constituted. During the Computer II proceedings, the FCC distinguished between basic and enhanced services for purposes of regulation under the access charge regime, in part to give the information service industry a chance to transition effectively into the electronic commercial marketplace.⁵ As such, information services providers have avoided regulation under an inefficient rate structure whose

⁴ Access Charge Reform, CC Docket No. 96-262, Notice of Proposed Rulemaking (December 24, 1996) [hereinafter "Notice"].

⁵ Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), Docket No. 20828, Final Decision, 77 FCC 2d 384 ¶ 100, 101 (Computer II).

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charges are non-cost based. Freedom from such excessive, additional costs has helped greatly in fostering an explosion in the innovation and availability of information services. As a result, information service providers have started to become a positive contributor to the electronic marketplace, which in turn has resulted in additional revenue to the incumbent LECs. As the Commission correctly noted in its NPRM on access charge reform, it makes little sense to extend this inefficient regime to a sector of our economy that has demonstrated significant growth potential.

Furthermore, incumbent LECs already have significant revenue with which to update the local exchange network. Information service providers are customers, not carriers. They have historically paid charges for connecting to the underlying network, thereby providing the LECs with a significant stream of revenue which should have been used to update the local network. This growth in the online information services has also resulted in additional revenue to incumbent LECs from the concomitant purchase of second residential access lines, which could be invested in the underlying network infrastructure. In toto, the revenue that has been generated from the growth of the information services industry and the monopoly profits that incumbent LECs have recognized under the current access charge regime, belies their claims of a paucity of resources with which to update the current network. Extending the current access charge regime to information service providers would result in double taxation, thereby hindering the growth of information services and reducing this revenue stream to the incumbent LECs.

Secondly, IIA envisions a transition period during which time access charges will move from a non-cost based system to one based upon true cost. IIA believes that access charges should not be applied to enhanced service providers and information service providers during this period, as doing so would stifle likely further economic growth in the marketplace for online information providers, for many of the reasons stated above. Extending inflated access charges to ISPs would unfairly place them at a competitive disadvantage even during a transitional phase, since many producers will just be establishing their presence in the electronic marketplace.

Finally, when access charges are priced at true cost, it may then be appropriate for the FCC to begin imposing access charges on customers whose purchase of second residential lines for Internet usage may cause additional strain on current networks. However, before the FCC assesses these charges, the Commission should gain a better understanding of where the charges are being incurred. Unfortunately, it is difficult to distinguish whether individual lines are being used for voice or data transmissions. Instead of extending access charges to residential second lines, the FCC should adopt policies which encourage the development of technologies that can distinguish between data and voice systems. Once appropriate technology is available, the FCC could then more easily determine whether it is economically efficient and socially beneficial to adopt a "pay for use" system, which would require users to offset costs for the use of the underlying networks.

Finally, access charges should be determined based upon market forces, not government regulation, so as not to disadvantage ISPs in the marketplace. IIA believes

that the best way to promote information services is to allow them to flourish in a market that is free of regulation. Assuming that access charges will reflect true cost in the foreseeable future, the commission should apply these charges to ISPs only after balancing the need to encourage availability and use of quality information services versus the need to offset the costs of operating the underlying networks.

One additional concern is that the FCC should not adopt an access charge regime which skews the costs of services between ISPs and traditional information service providers such as mail order and catalogue services. The FCC's Computer II distinction between basic and enhanced services has resulted in the explosive growth of the information services industry. Unfortunately not all sectors of our nation have been able to access these new products and services. This is particularly unfortunate as our country moves from a service-based to an information-based economy. However, in order to encourage greater availability of these services, the FCC must determine whether the imposition of access charges would inhibit the delivery of those services by imposing additional costs on electronic information services not incurred by traditional information providers. Once access charges reflect true costs for the delivery of electronic information services, advantages for delivery of electronic versus traditional services will be properly determined by marketplace competition. This is another important reason why the commission should insure that the resources to improve and maintain the underlying network are sufficient for the delivery of information services before extending access charges to ISPs.

Conclusion

The current access charge regime should not be extended to ISPs. Furthermore, during the transition period from the current regime to a cost-based system, the FCC should use its forbearance authority to refrain from imposing access charges on ISPs. Finally, when access charges reach actual cost, the commission should only extend the access charge requirements to ISPs after balancing the need for delivery of quality information services against the cost of operating and maintaining the underlying network.

Sincerely,

A handwritten signature in black ink, appearing to read "RDunn", is positioned above the typed name and title.

Ron Dunn, President
Information Industry Association
1625 Massachusetts Avenue, N.W.
Suite 700
Washington, D.C. 20036
(202) 986-0280

Dated: March 24, 1997